

in the  
**Supreme Court**  
of the  
**United States**

October Term, 1978

No. 78- 84 4

KENNETH A. PLANTE, DEMPSEY J. BARRON,  
PHILIP D. LEWIS, JACK D. GORDON, and JON  
C. THOMAS,

*Petitioners,*

*vs.*

LARRY GONZALEZ as Executive Director of the  
Florida Commission on Ethics; BRUCE  
SMATHERS, as Secretary of State of Florida;  
THE FLORIDA COMMISSION ON ETHICS; and  
REUBIN O'D ASKEW, as Governor of the State of  
Florida,

*Respondents.*

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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Supreme Court, U. S.

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WHETHER THERE IS A FOURTEENTH AMENDMENT BAR TO STATE LAWS REQUIRING DISCLOSURE OF PERSONAL FINANCIAL INTERESTS AS A CONDITION OF HOLDING PUBLIC OFFICE, IS A FEDERAL QUESTION OF GREAT SIGNIFICANCE TO THE NATION'S ELECTORAL SYSTEM THAT HAS NOT BEEN, BUT WHICH SHOULD BE, DECIDED BY THE SUPREME COURT. 19

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**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

Petitioners<sup>1</sup> pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered June 30, 1978; petition for rehearing *en banc* denied on August 31, 1978.

**OPINIONS BELOW**

The Order of the United States District Court for the Northern District of Florida dismissing the Complaints alleging invalidity of Art. II, §8, Fla. Const. under privacy guarantees of the Fourteenth Amendment, for failure to state a claim for relief, is dated September 14, 1977. It is reported at 437 F.Supp. 536 (N.D. Fla. 1977) and is set forth in the Appendix at page 1.

The decision of the United States Court of Appeals for the Fifth Circuit affirming the Order of the District Court (*Plante v. Gonzalez*) is reported at 575 F.2d 1119 (5th Cir. 1978) and is set forth in the Appendix at Page 15.

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<sup>1</sup>Plaintiffs (Petitioners) in District Court Case No. 77-0852 were Florida Senators Plante, Barron, Lewis, Gordon and *William D. Gorman*. Plaintiff (Petitioner) in District Court Case No. 77-0868 was Senator Jon C. Thomas. The suits were consolidated. Senator Gorman was dismissed as a party when he complied with the financial disclosure requirement of Art. II, §8(a), Fla. Const.

## JURISDICTION

The decision of the Court of Appeals for the Fifth Circuit was entered on June 30, 1978. A timely Petition for Rehearing *en banc* was denied on August 31, 1978, and this Petition for Certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Whether a State may, consistent with Fourteenth Amendment guarantees of "the individual interest in avoiding disclosure of personal matters" require not only the recording, but the *Public Disclosure*, of economic and financial interests (*defined as including net worth statements identifying and evaluating each asset and liability in excess of \$1,000.00; and either the most recent Federal income tax return or a statement showing all sources of income in excess of \$1,000.00*) as a condition of seeking and holding public office?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. The Ninth Amendment to the Constitution of the United States:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

B. The Fourteenth Amendment to the Constitution of the United States, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

C. Article II, Section 8, of the Florida Constitution

Ethics in Government. — A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) *All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.*

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the State for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the Legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during term of office before any State agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(h) Schedule — On the effective date of this amendment and until changed by law:

(1) *Full and public disclosure of financial interests shall mean filing with the Secretary of State by July 1 of each year a sworn statement showing net worth and indentifying each asset and liability in excess of \$1,000 and its value together with one of the following:*

*a. A copy of the person's most recent federal income tax return; or*

*b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in sub-section (f), and such rules shall include disclosure of secondary sources of income.*

(2) *Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to sub-section (h) (1).*

(3) *The independent commission provided for in sub-section (f) shall mean the Florida Commission on Ethics.*

## STATEMENT OF THE CASE

On January 4, 1977,<sup>2</sup> the "Sunshine Amendment" was added to Florida's Constitution as Art. II, §8. It declared a public office to be a public trust. To assure the right of the people to "secure and sustain that trust against abuse" it requires full and public disclosure of both personal financial interests (§8(a)) and campaign finances (§8(b)) from public office holders and candidates for office; prohibits legislators from representing third persons before state agencies (other than judicial tribunals) while in office (§8(e)); imposes penalties for breach of the public trust (§8(c)) and (d); and establishes an independent commission (The Florida Commission on Ethics)<sup>3</sup> to "conduct investigations and make public reports on all complaints concerning breach of public trust by public officers . . . ." (§8(f)).

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<sup>2</sup>Art. XI, §3, Fla. Const., reserves to the people the right to propose amendments to the State Constitution through the initiative process. Following a successful petition campaign, the "Sunshine Amendment" was placed on the ballot, and thereafter approved by the voters on November 2, 1976. It became effective on "the first Tuesday after the first Monday in January following the election." (January 4, 1977), Art. XI, §5(c), Fla. Const.

<sup>3</sup>§8 (h) (3) of the Amendment establishes the Florida Commission on Ethics as the independent agency, "until changed by law." This commission was created in 1974 (Ch. 74-176, Laws of Florida) "to serve as guardian of the standards of conduct for the officers and employees of the State. . . ." §112.320, Fla. Stat. Its initial duty was to oversee the requirements of the Code of Ethics (Ch. 74-177; §§112.311-112.317, Fla. Stat.). Dissatisfaction with the reach of this legislation gave impetus to an initiative (Art. XI, §3, Fla. Const.) that added Art. II, §8 to the State Constitution and an overlay of constitutional duties on the Commission.

This litigation involves the validity of §8(a) of the Amendment, which requires that:

All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

Full and public disclosure of personal financial interests is defined by §8(h)(1) of the Amendment as the recording by incumbents and candidates for office of a sworn net worth statement, identifying each asset and liability in excess of \$1,000.00 and its value; together with either the person's most recent Federal income tax return or a sworn statement identifying each separate source and amount of income in excess of \$1,000.00. The documents are recorded in the office of the Secretary of State and are to be supplemented each July 1. They are public documents. Copies are available to all persons upon request. The recorded financial interests of those in office on July 1, 1977 and those who sought office in the elections of 1978 have been greatly publicized by the press, much of it in contrasting columns. (App. pp. 73 to 76)

On July 10, 1977, just prior to the effective date of the recording and publication requirements of the

Amendment, five State Senators<sup>4</sup> stated that they would decline to record their personal financial documents with the Secretary of State under circumstances which required the immediate publication of their contents to the public. Suit was instituted in the United States District Court for the Northern District of Florida seeking a declaration that §8(a) of the Amendment violated their constitutional rights of privacy guaranteed by the Fourteenth Amendment to the United States Constitution.

The Senators asserted that the liberty right, guaranteed by the 14th Amendment, of freedom from compulsory public disclosure of personal financial matters, may be overborne only when a two-fold test is met.

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<sup>4</sup>Florida legislators are part-time officials, who are paid \$12,000 a year.

To apply newly-created professional limitations *on a part-time Florida legislator* in the midst of his term of office obviously defeats expectations honestly arrived at when the office was initially sought. The office itself is not abrogated or its duties altered, of course, but the privileges of officeholding are no less impaired by curtailing the non-legislative employment opportunities than they would be if the office was made full-time and outside employment prohibited altogether.

*Myers v. Hawkins*, Case No. 53, 639, (9/14/78) FLW, SCO 431, 434 (App. 63.)

Regular sessions of the Florida Legislature are limited to 60 days a year. Art. III, §3, Fla. Const. As set forth in their Complaints, the five Senators earn their livelihoods in private occupations, including those of lawyer, rancher, realtor, savings and loan executive and family (rendering) business.

The government must show that sufficient compelling state interests predominate and it must employ narrowly tailored methods to achieve those ends so as to constitute the least impairment of protected rights.<sup>5</sup>

The State has a vast concern in deterring corruption and conflict of interests in public life; in creating confidence in public officials; and in detecting and prosecuting those who violate the public trust. These interests are sufficient to compel the *recording* of intimate financial and economic data by those who seek or hold public office. Recordation with an independent State Commission, entrusted with the responsibility of conducting investigations, use of the subpoena power, and the right to publicize and take action upon probable

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<sup>5</sup>Even a " 'significant interference' with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms.

*Buckley v. Valeo*, (1976) 424 U.S. 1, 46 L.Ed.2d 659, at 691, 96 S.Ct. 612, at 638.

cause findings of any breach of the public trust, will completely vindicate all legitimate state interests.<sup>6</sup>

<sup>6</sup>Section 112.322(4)-(7), Fla. Stat. provides the Commission on Ethics with wide investigative and enforcement powers:

(4) The Commission has the power to subpoena, audit, and investigate. The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the commission's duties or exercise of its powers. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt. Witnesses shall be paid mileage and witness fees as authorized for witnesses in civil cases.

(5) The commission may recommend that the Governor initiate judicial proceedings in the name of the state against any executive or administrative state, county, or municipal officer to enforce compliance with any provision of this part or to restrain violations of this part, pursuant to s. 1(b), Art. IV of the State Constitution, and the Governor may without further action initiate such judicial proceedings.

(6) The commission is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties. The Department of Legal Affairs shall, upon request, provide legal and investigative assistance to the commission.

(7) It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

However, the *publication* of such data, in the absence of probable cause findings of wrongdoing, serves no function other than gratification of prurient curiosity. It is disclosure for disclosure's sake alone. It is an aid only to newspaper sales and rumormongery. One major newspaper reported the net worth and assets of local officials and judges under the heading "Juicy Gossip from Tallahassee". See *Palm Beach Post* dated August 7, 1977. The public has no more "right to know" the details of an innocent candidate's financial affairs than it has the right to compel the publication of his reading materials, church attendance, medical records, sex preferences, organizational memberships or daily intake of alcohol or calories. Nor does the public have the capability of policing the financial information that is thrust upon it. No relationship between publication of financial data and integrity in government has been established or even attempted. In the two years since public exposure of personal finances has been imposed on thousands, not a single case of breach of trust has been forwarded by the public to the commission for action (other than, as in the case of the Petitioners, for failure to file).

On the other hand, compulsory financial disclosure shreds the privacy rights of public officials, their families and all who associate with them in business.

It is a truism to suggest that "[f]inancial transactions can reveal much about a person's activities, associations and beliefs."<sup>7</sup> This becomes apparent upon examination of the contents of those documents which

<sup>7</sup>*California Bankers Ass'n. v. Shultz*, (1974) 416 U.S. 21, 78, 94 S.Ct. 1494, 39 L.Ed.2d 812, 850.

must be opened to public scrutiny as a condition of seeking or holding public office. The financial statements are not restricted to matters related to the officeholder's sphere of influence, rather, total personal economic disclosure is required, no matter how irrelevant to the nature of the officer's duties. Professional aspirants to office are required to reveal the names of and amounts of payment from the clients of attorneys, the patients of physicians and psychiatrists and the prescription drug users of pharmacists. Partners and other associates in business transactions must be identified, including the amounts and percentages of their participation, regardless of whether or not the business venture occurs within the State or is subject to its regulation. The entire contents of an investment portfolio and its decisions on sales and purchases must be shown. Details are also exposed concerning alimony, child and parental support, political and charitable contributions, and attendance upon the services of psychiatrists, social workers, lawyers and other professionals.

Since there was a natural interest in avoiding disclosure of such personal matters without a showing that less intrusive methods were unworkable, the Senators requested a hearing on their Complaint to establish that, on balance, the satisfaction of legitimate government needs does not require the end of financial privacy of persons in public life.

The District Court dismissed the Complaints<sup>8</sup> finding that since there was no "fundamental right of privacy inherent in the personal financial affairs of public officers" (App. p. 5), there was no need to invoke the "less drastic means" (App. p. 5) analysis sought by the Senators.

The Court of Appeals for the Fifth Circuit affirmed the ruling but on different grounds. Contrary to the lower tribunal, it found that "Americans have a constitutional right to privacy. . . ." *Plante v. Gonzalez*, (5th Cir. 1978) 575 F.2d 1119, 1127; ". . . [the Senators'] contentions do fall directly within this right. . . ." *Id.* at 1132; ". . . [p]rivacy of personal matters is an interest in and of itself, protected constitutionally . . . and at common law . . ." *Id.* at 1135.

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<sup>8</sup>It appearing to a certainty that the plaintiffs cannot prevail under any state of facts which could be proved in support of their claim, it is Ordered that the defendants' motions to dismiss are granted, and the plaintiffs' complaints in support of a declaratory judgment are hereby dismissed with prejudice.

(Order of District Court, App. p. 14).

The Court of Appeals "balanced"<sup>9</sup> this privacy right against public interests and found the latter to be dominant — a conclusion never denied, nor controverted here by the petitioners. The Court, acknowledging that this conclusion "does not end our inquiry" *Id.* at 1136, then turned its attention to the *least restrictive means* analysis and considered the Senators' contention "that the State's interests would be served just as well by limiting disclosure to the Florida Commission on Ethics." *Plante supra*, 575 F.2d, at 1137<sup>10</sup> The court con-

<sup>9</sup>Although in the autonomy strand of the right to privacy, something approaching equal protection "strict scrutiny" analysis has appeared, *we believe that the balancing test, more common to due process claims, is appropriate here. The constitutionality of the amendment will be determined by comparing the interests it serves with those it hinders.*

At the same time, scrutiny is necessary. The Supreme Court has clearly recognized that the privacy of one's personal affairs is protected by the Constitution. Something more than mere rationality must be demonstrated. Otherwise, public disclosure requirements such as Florida's could be extended to anyone, in any situation. *Plante v. Gonzalez*, (5th Cir, 1978) 575 F.2d 1119, at 1134 (emphasis supplied).

<sup>10</sup>The senators' final complaint is that the State's interests would be served just as well by limiting disclosure to the Florida Commission on Ethics. This could deter some corruption, restore some public confidence, and detect some malfeasance. But the Florida voters have decided that it could not provide the voting public with the valuable information public disclosure creates; something more is needed. This educational feature of the Amendment serves one of the most legitimate of state interests: it improves the electoral process. That goal, recognized as important by the Supreme Court in *Buckley*, can be met in no other way. That goal justifies public publication of the Senators' financial statements.

*Plante v. Gonzalez*, 575 F.2d 1119, at 1137.

cluded that the "difficult questions . . . presented by the Senators . . . are questions of law, not of fact" and "that no law exists to support the Senators' complaint." *Plante*, *supra* 575 F.2d, at 1137-1138.

Financial privacy is a matter of serious concern, deserving strong protection. The public interests supporting public disclosure for these elected officials are even stronger. We join the majority of courts considering the matter and conclude that mandatory financial disclosure for elected officials is constitutional.

*Plante*, *supra*, 575 F.2d at 1136.

## STATE LITIGATION INVOLVING PETITIONERS

Senators Plante and Thomas were elected to four year terms in November, 1974. Senators Barron, Gordon and Lewis were elected to four year terms on November 2, 1976 and took office "upon election" (Art. III, §15(d), Fla. Const.) Thus, all Petitioners were incumbents on January 4, 1977, the effective date of Art. II, §8, Fla. Const. On February 15, 1978, the Florida Commission on Ethics declared the Senators guilty of having breached the public trust for failure to record their economic resources as required by §8(a) of the Amendment. On April 6, 1978, the District Court of Appeal of Florida, First District, reversed the Commission's order on the ground that the Commission had no jurisdiction over Senators by virtue of Art. III, §2, Fla. Const., establishing each house as the sole judge of the qualifications of its members. *Plante v. Florida Commission on Ethics*, (Fla. 1st DCA, 1978) 356 So.2d 1353. Neither the validity of the Amendment under the Federal Con-

stitution nor its *retrospective* applicability to incumbents under state law were issues in the proceeding. The Commission's appeal of this Order is pending before the Supreme Court of Florida.

On September 14, 1978, in *Myers v. Hawkins*, Case No. 53,639, 1978 FLW, SCO 431 (App. p. 63) the Supreme Court of Florida held that the Amendment's (§8(e)) prohibition against a State Legislator's appearance before State agencies while in office was inapplicable to incumbents as of January 4, 1977.

Thereafter, on October 6, 1978, the Supreme Court of Florida ordered the parties to these proceedings to submit briefs on the issue of the applicability of the financial disclosure requirements of §8(a) to the Petitioners in light of its decision in *Myers, supra*. Argument is scheduled for December 5, 1978.

Even if the Supreme Court of Florida were to hold that the Petitioners were not under obligation to publish their financial resources in July, 1977, the ripeness of this controversy would not be impaired. Although Senators Plante and Thomas declined to seek re-election (their terms expired November 7, 1978) and Senator Lewis has not made a decision as to his future plans, Senators Barron and Gordon have advised counsel of their intention to seek re-election, absent the bar of the financial disclosure requirement. Their concerns, therefore, are more than merely hypothetical. The Amendment's operation against them is imminent and real. They will be subject to the Amendment's disclosure requirements not later than the time for qualifying in July, 1980. If these Senators were obliged to defer action until then, under no reasonably foreseeable cir-

cumstances could they obtain review in advance of the November election and would thus be barred from both the ballot<sup>11</sup> and the office. The status of the state litiga-

<sup>11</sup>The amendment by its terms requires the filing of the financial data with the Secretary of State "by July 1 of each year" Art. II §8(h) (1) Fla. Const. §100.061 F.S., establishes "the first Tuesday that falls on the 6th day or later in September of each year in which a general election is held" as the date of the first primary for nomination of candidates of political parties. §99.061 F.S. states that the first date for qualifying "shall be the 63rd day prior to the first primary". In 1978 the first primary date was September 12th; and the earliest time for qualifying was July 11, 1978. The Secretary of State's opinion that the Amendment did not apply to non-incumbent candidates for office was contested. In *State of Florida ex rel Common Cause, et al, v. Bruce A. Smathers as Secretary of State, et al*, Case No. 78-1724 in the Circuit Court for Leon County, Florida, the Circuit Court overruled the secretary as follows:

This Court is also of the opinion that the inclusion of the July 1 date in Section 8(h) as a filing deadline does not operate to relieve a non-incumbent candidate for elected constitutional office of the more stringent disclosure requirements of Section 8(h) simply because he does not become a candidate until after July 1. To hold otherwise would be to ignore the intent so clearly expressed in Sections 8(a) and (h). Moreover, such a strict construction would not comport with the rule of reason that is basic to all constitutional interpretation.

If Intervenor Plante is correct in his interpretation of Section 8(h) a non-incumbent candidate for elected constitutional office who became a candidate after July 1 of an election year would never be required *as a candidate* to fully and publicly disclose his or her financial interests. If successful in his or her campaign for office, he or she would not fully and publicly disclose until after some six (6) months into his or her term of office. If unsuccessful, it could hardly be urged that he or she was yet a candidate for elected constitutional office, come the following July 1.

*State ex rel Common Cause v. Smathers, supra*, pp. 5-6 (emphasis in original).

This decision is on appeal to the Supreme Court of Florida.

tion and its potential for a *temporary* resolution of the controversy should therefore not bar consideration of this Petition. *Buckley v. Valeo*, (1976) 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659; *Regional Rail Reorganization Act Cases*, (1974) 419 U.S. 102, 95 S.Ct. 335, 42 L.Ed.2d 320.<sup>12</sup>

<sup>12</sup>In *Buckley v. Valeo*, (1976) 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 the plaintiffs included a *candidate* for the presidency, an incumbent U.S. Senator who was a *candidate* for re-election. The court stated:

In our view, the complaint in this case demonstrates that at least some of the appellants have a sufficient "personal stake" in a determination of the constitutional validity of each of the challenged provisions to present "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Aetna Life Ins. Co. v. Haworth* . . . [cite]

*Buckley v. Valeo*, supra, 96 S.Ct., at 631, 46 L.Ed.2d, at 683.

In *Regional Rail Reorganization Act cases*, (1974) 419 U.S. 102, 95 S.Ct. 335, 42 L.Ed.2d 320, the court stated:

"Thus, occurrence of the conveyance allegedly violative of Fifth Amendment rights is in no way hypothetical or speculative. Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect."

*Regional*, 419 U.S., at 143, 42 L.Ed.2d, at 353.

## REASONS FOR GRANTING THE WRIT

### I.

WHETHER THERE IS A FOURTEENTH AMENDMENT BAR TO STATE LAWS REQUIRING DISCLOSURE OF PERSONAL FINANCIAL INTERESTS AS A CONDITION OF HOLDING PUBLIC OFFICE, IS A FEDERAL QUESTION OF GREAT SIGNIFICANCE TO THE NATION'S ELECTORAL SYSTEM THAT HAS NOT BEEN, BUT WHICH SHOULD BE, DECIDED BY THE SUPREME COURT.

The past decade has witnessed a proliferation of laws attempting to advance the integrity of the electoral process at both State and national levels. These enactments fall into two broad categories. In the first set are the laws relative to *campaign financing*, which seek to impose restrictions on contributions to and expenditures by candidates in their efforts to secure and retain public office. The second sphere of legislation is directed toward the elimination of conflicts between private gain and the public good by imposing a variety of obligations upon candidates and office holders, including *public disclosure of personal finances*, and restrictions on outside compensation and employment.

Both groups of laws raise constitutional questions of the gravest importance. In meeting the heightened demands of citizens that deficiencies in election codes be corrected to provide for less expensive election campaigns and more open and honest government, there has been a concomitant curtailment of the speech, associa-

tion and privacy guarantees of public officials and candidates for office. The issue of whether these reform laws are valid exercises in the societal interest, or cut impermissible swathes across personal liberties, is one which requires Supreme Court determination.

The validity of the first group of these laws has already been decided. When Congress enacted the Federal Election Campaign Act of 1974<sup>13</sup> it acknowledged the constitutional proportion of the competing interests involved by providing an expedited

<sup>13</sup>Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 11, as amended, Federal Election Campaign Act Amendments of 1974, Pub.L. No. 93-443, 88 Stat. 1272. Generally, 2 USCA §§431, *et seq.*; 18 USCA §§591 *et. seq.*

review procedure within the Act itself.<sup>14</sup> In *Buckley v. Valeo*, (1976) 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, the Supreme Court declared the statute's limitations on a candidate's contributions of his own funds towards his campaign,<sup>15</sup> as well as the ceiling on campaign

<sup>14</sup>2 U.S.C. §437 h. (§315(a) of the Federal Election Campaign Act) provides:

§437 h. Judicial Review

(a) The Commission, the national committee of any political party of any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) of this section shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a) of this section.

<sup>15</sup>Section 608(a)'s ceiling on personal expenditures by a candidate in furtherance of his own candidacy thus clearly and directly interferes with constitutionally protected freedoms.

*Buckley v. Valeo*, *supra*, 96 S.Ct., at 651, 46 L.Ed.2d, at 707

spending<sup>16</sup> to be invalid. Governmental interests in electoral improvement were held insufficient to warrant the resultant limitations on candidates for public office and their First Amendment guarantees of free speech.

[T]he First Amendment requires the invalidation of the Act's independent expenditure ceiling, §608(e)(1), its limitation on a candidate's expenditures from his own personal funds, §608(a), and its ceilings on overall campaign expenditures, §608(c). These provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate.

*Buckley v. Valeo*, supra, 424 U.S. 1, 96 S.Ct., at 653-654, 46 L.E. 2d, at 710.

The validity of the second group of the laws, those requiring public disclosure of financial interests as a

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<sup>16</sup>We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify §608(e)(1)'s ceiling on independent expenditures.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression.

*Buckley v. Valeo*, supra, 96 S.Ct., at 647, 648, 46 L.Ed.2d, at 702, 704.

means of enhancing the honesty of public officials and insuring integrity in government, has not yet been authoritatively decided by the Supreme Court.<sup>17</sup> Indeed the decision by the Court of Appeals below is the first federal decision on this question.<sup>18</sup>

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<sup>17</sup>This Court has dismissed for want of a substantial federal question, appeals from three state court decisions upholding the recording and public disclosure statutes of those state: *Montgomery County v. Walsh*, (Md.App. 1975) 274 Md. 489, 336 A.2d 97, app. *dism'd*, (1976), 424 U.S. 901, 96 S.Ct. 1091, 47 L.Ed.2d 306; *Fritz v. Gorton*, (Wash. 1974) 83 Wash.2d 275, 517 P.2d 911, app. *dism'd*, (1974), 417 U.S. 90, 94 S.Ct. 2596, 41 L.Ed.2d 208; *Stein v. Howlett*, (Ill. 1972) 52 Ill.2d 570, 289 N.E.2d 409, app. *dism'd*, (1973), 412 U.S. 925, 93 S.Ct. 2750, 37 L.Ed.2d 152.

The Court of Appeals found that the summary dismissals and the teachings of *Hicks v. Miranda*, (1975) 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223, did not bar its consideration of the Senators' claim since Florida's requirements are factually different from those dismissed by this Court. *Mandel v. Bradley*, (1977), 432 U.S. 173, 97 S.Ct. 2238, 53 L.Ed.2d 199. Moreover, the requirements of *Hicks v. Miranda* upon lower tribunals has no bearing upon whether the Supreme Court should consider a cause.

This Court also declined to review, by certiorari, *Illinois State Employees Ass'n v. Walker*, (Ill. 1974), 57 Ill.2d 512, 351 N.E.2d 9, cert. denied sub nom., *Troopers Lodge No. 41 v. Walker*, (1974), 419 U.S. 1058, 95 S.Ct. 642, 42 L.Ed.2d 656. (Justices Blackmun and Powell would have granted certiorari).

<sup>18</sup>*O'Brien v. DiGrazia*, (1st Cir. 1976), 544 F.2d 543, cert. denied sub nom., *O'Brien v. Jordan*, (1977) 431 U.S. 914, 97 S.Ct. 2173, 53 L.Ed.2d 223, did not involve public disclosure of personal financial information. There the Court of Appeals for the First Circuit found no constitutional infringement when police officers, who had been linked with organized crime, were required by order of the Boston police commissioner to report, *but not disclose to the public-at-large*, their families' income sources, assets, approximate expenditures and to furnish copies of their federal or state income tax return.

These laws are equally open to significant challenge on First and Fourteenth Amendment grounds, since in their operation they puncture the evanescence we call privacy, exposing the intimate details which compose the special personhood of each American. These laws invade and harm privacy interests of public officials in the 41 states,<sup>19</sup> and the Federal jurisdiction<sup>20</sup> which now re-

<sup>19</sup> Ala. Code Tit. 55, §327(8)	1978 Mass. Adv. Legis. Serv.
Alaska Stat. §39.50.010	Ch. 210
Ariz. Rev. Stat. §38-541	1978 Mass. Adv. Legis. Serv.
Ark. Stat. Ann. §12-3001	Ch. 268B
Cal. Gov't Code §3600 (West)	Minn. Stat. §10A.01
Cal. Gov't Code §87200 (West)	Mo. Ann. Stat. §130.010 (Ver-
Colo. Rev. Stat. §24-6-201	non)
1977 Conn. Pub. Acts 77-600	Neb. Rev. Stat. §49-1101
Del. Code Tit. 29, §5851	Nev. Rev. Stat. §528
Del. 1977 Executive Order No. 1	N.J. 1975 Executive Order No. 15
Fla. Const. — 1968 Revision —	N.M. Stat. Ann. §5-12-1
Art. II, §8	N.Y. Exec. Law §74
Fla. Stat. §112.311	N.Y. Pub. Off. Law §73
Haw. Rev. Stat. §84-1	N.Y. Legis. Law §80
Ill. Const. of 1970, Art. 13, §2	N.Y. 1975 Executive Order No.
Ill. Ann. Stat. ch. 127, §601-101	10
(Smith-Hurd)	N.Y. 1976 Executive Order No.
Ill. 1973 Executive Order No. 4	10.1
Ill. 1977 Executive Order No. 3	N.C. Gen. Stat. §120-85
Ind. Code Ann. §4-2-6 (Burns)	N.C. 1977 Executive Order No. I
Iowa Code Ann. §68B.1 (West)	N.D. Cent. Code §16-22-01
Kan. Stat. Ann. §46-215	Ohio Rev. Code Ann. §102.01
Ky. Rev. Stat. §61.710	(Page)
La. Rev. Stat. Ann. §1101	Okla. Stat. Tit. 74 §1401
(West)	Or. Rev. Stat. §244.010
Me. Rev. Stat. Tit. 1, §1001	R.I. Gen. Laws §36-14-1
Md. Ann. Code Art. 33, §29-1	S.C. Code §8-13-810
Md. 1969 Executive Order Art.	S.D. Compiled Laws Ann. §3-
41	1A-1
Md. 1974 Executive Order Art.	Tenn. Code Ann. §8-4125
33	1975 Tenn. Pub. Acts. Ch. No. 313

Tex. Pub. Offices Code Ann.	Wash. Rev. Code §42.17.240
Tit. 110A, §6252-9b (Vernon)	W. Va. Code §6B-1-1
Utah Code Ann. §67-16-1	Wis. Stat. §19.41
Va. Code §2.1-352	

<sup>20</sup>Federal "Public Officials Integrity Act of Oct. 26, 1978, P.L.No. 95-521, \_\_\_\_\_ Stat. \_\_\_\_\_, \_\_\_\_\_ U.S.C. \_\_\_\_\_, requires public financial disclosure by members of the Legislative, Executive and Judicial branches. The President and Vice-President, members of congress and candidates to those offices, as well as federal employees paid at the GS-16 level or above, must file an annual financial statement containing, *inter alia*:

Each source, type and amount of income from any source other than salaries.

Gifts other than from a relative.

The identity and category of value of any interest in trade or business property bearing a value of \$1,000 or more.

Debts owed, identifying the creditor, in excess of \$5,000.

Debts for home mortgages, car loans, household furniture or appliances, are excepted.

The identity, date and category value of purchases, sales or exchanges of real property (other than personal residence) stocks, bonds or other securities, exceeding \$1,000.00 during the preceding year. (Transactions with spouse or one's children do not have to be reported.)

The public official must also report the assets, liabilities and financial transactions of his or her spouse and dependent children; except that spouse and dependent children transactions may be omitted if the public official certifies that he or she had no control over the spouse or children's economic activities and would not receive any economic benefit from those interests.

Categories of value for reporting assets, liabilities and property transactions are:

(a) less than \$5,000.00. (b) \$5,000-15,000. (c) \$15,000-50,000. (d) \$50,000-100,000. (e) \$100,000-\$250,000. (f) \$250,000-\$500,000. (g) \$500,000-\$1,000,000. (h) \$1,000,000-\$2,000,000 (i) \$2,000,000-\$5,000,000. (j) above \$5,000,000.

quire incumbents and persons seeking public office to disclose their personal financial interests and economic resources.

In some respects, Florida's Amendment is one of the most intrusively stringent disclosure codes in the nation. It requires the publication of the value of all assets and liabilities in excess of \$1,000.00; income from all primary sources in excess of \$1,000.00, or the individual's most recent Federal Income Tax return. It requires professional office holders to disclose the names of clients and the amounts of their fees, without regard for the burden that this places on lawyer-client, physician-patient, clergy-parishioner and other relationships where there is a reasonable expectation, even a duty, of third person privacy. Florida allows no exemption for extraordinary strains on these fiduciary relationships nor does it provide procedures for seeking exemption for particular hardships.

On the other hand, Florida's Amendment fails to require either the *recording* or the disclosure of spouse or minor children assets, liabilities, income or transactions; and further fails to require *recording* or disclosure of secondary income except as the Commission shall prescribe "rules (which) shall include disclosure of

secondary sources of income." Art. II, §8(h)(i)b, Fla. Const.<sup>21</sup>

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<sup>21</sup>The Court of Appeals stated its concerns about secondary source disclosures but noted the existence of an "option".

The shape of the secondary source requirement is unclear. If precise regulations on this matter have been promulgated by the Florida Commission on Ethics, we have not found them. Commission regulations might allow exemptions in sensitive situations. The Amendment provides an option, the federal tax return, which eliminates any need to itemize income sources. On the record before us, we cannot invalidate this feature of the Amendment. We intimate no opinion as to the outcome of a challenge to the application of the secondary source requirement in some specific situation.

*Plante v. Gonzalez, supra*, 575 F.2d, at 1137.

Paradoxically, the Court of Appeals voiced trepidation about the disclosure of the "option":

Without implying any views on the merits of a suit which properly raised the issue, we feel a substantial constitutional issue might be raised by disclosure of one's income tax returns. Such disclosure could be troublesome if it were to reveal the nature of various contributions made by the official or candidate, such as contributions to a church, a political party, or a charity. Regulations by the Commission on Ethics might, of course, eliminate any threat of such sensitive revelations. The issue must await another case.

*Plante v. Gonzalez, supra*, 575 F.2d, at 1133, n. 20.

The absence of these two factors, prevalent in other state<sup>22</sup> and Federal legislation, makes the Amendment a

<sup>22</sup>The following statutes compel public officials to record the financial interests of members of their immediate family:

Ala. Code Tit. 55, §327(8); Alaska Stat. §39.50.010; Ariz. Rev. Stat. §38-541; Ark. Stat. Ann. §12-3001; Colo. Rev. Stat. §24-6-201; 1977 Conn. Pub. Acts 77-600; Del. 1977 Executive Order No. 1; Ill. Ann. Stat. ch. 127, §601-101 (Smith-Hurd); Ill. 1973 Executive Order No. 4; Ill. 1977 Executive Order No. 3; Ind. Code Ann. §4-2-6 (Burns); Ky. Rev. Stat. §61.710; Me. Rev. Stat. Tit. 1, §1001; Md. Ann. Code Art. 33, §29-1; Md. 1969 Executive Order Art. 41; Md. 1974 Executive Order Art. 33; 1978 Mass. Adv. Legis. Serv. Ch. 210; 1978 Mass. Adv. Legis. Serv. Ch. 268B; Neb. Rev. Stat. §49-1101; Nev. Rev. Stat. §528; N.J. 1975 Executive Order No. 15; N.M. Stat. Ann. §5-12-1; N.C. Gen. Stat. §120-85; N.C. 1977 Executive Order No. 1; N.D. Cent. Code §16-22-01; Ohio Rev. Code Ann. §102.01 (Page); Or. Rev. Stat. §244.010; R.I. Gen. Laws §36-14-1; S.D. Compiled Laws Ann. §3-1A-1; Tenn. Code Ann. §8-4125; Tex. Pub. Offices Code Ann. Tit. 110A, §6252-9b (Vernon); Va. Code §2.1-352; W. Va. Code §6B-1-1; Wis. Stat. §19.41

The following statutes require disclosure of secondary sources of income:

Ala. Code Tit. 55, §327(8); Alaska Stat. §39.50.010; Ariz. Rev. Stat. §38-541; Ark. Stat. Ann. §12-3001; Colo. Rev. Stat. §24-6-201; 1977 Conn. Pub. Acts 77-600; Del. 1977 Executive Order No. 1; Fla. Stat. §112.311; Haw. Rev. Stat. §84-1; Ill. Ann. Stat. ch. 127, §601-101 (Smith-Hurd); Ill. 1973 Executive Order No. 4; Ill. 1977 Executive Order No. 3; Ind. Code Ann. §4-2-6 (Burns); Kan. Stat. Ann. §46-215; Ky. Rev. Stat. §61-710; Me. Rev. Stat. Tit. 1, §1001; Md. Ann. Code Art. 33, §29-1; Md. 1969 Executive Order Art. 41; Md. 1974 Executive Order Art. 33; 1978 Mass. Adv. Legis. Serv. Ch. 210; 1978 Mass. Adv.

Legis. Serv. Ch. 268B; Minn. Stat. §10A.01; Neb. Rev. Stat. §49-1101; Nev. Rev. Stat. §528; NJ 1975 Executive Order No. 15; N.M. Stat. Ann. §5-12-1; N.Y. Pub. Off. Law §73; N.Y. 1975 Executive Order No. 10; N.C. Gen. Stat. §120-85; N.C. 1977 Executive Order No. 1; N.D. Cent. Code §16-22-01; Ohio Rev. Code Ann. §102.21 (Page); Or. Rev. Stat. §244.010; R.I. Gen. Laws §36-14-1; S.D. Compiled Laws Ann. §3-1A-1; Tenn. Code Ann. §8-4125; 1975 Tenn. Pub. Acts. Ch. No. 313; Tex. Pub. Offices Code Ann. Tit. 110A, §6252-9b (Vernon); Utah Code Ann. §67-16-1; Va. Code §2.1-352; Wash. Rev. Code §42.17.240; W. Va. Code §6B-1-1; Wis. Stat. §19.41

Other statutes include provisions which, for example:

(1) Limit public access to the financial data:

1977 Conn. Pub. Acts 77-600 (Although the financial statement is a matter of public information, the names of clients and customers listed as sources of income shall be sealed and confidential. Only upon a finding of probable cause may the Commission turn over to the chief state's attorney such relevant information as may be germane to the specific violations or the prosecutor may subpoena the information in a criminal action. The information is not open to public inspection unless the public official requests otherwise);

Haw. Rev. Stat. §84-1, 84-17; Ind. Code Ann. §4-2-6;

Kan. Stat. Ann. §46-215 (each individual examining a financial statement must sign a form or register prepared and publicly maintained by the secretary of state identifying the date and the examiner by name, occupation, address, and telephone number);

Md. Ann. Code Art. 33, §29-1 (persons examining shall record their name, address and be subject to reasonable fees and regulations);

N.M. Stat. Ann. §5-12-1 (The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the secretary of state for inspection to any citizen of this state. The valuation shall be confidential except for official removal or impeachment proceedings."");

N.Y. Exec. Law §74 (Attorney-general may, in his publication of advisory opinions and determinations of the committee, make appropriate deletions to prevent disclosure of the identity of officers and employees involved);

N.Y. Legis. Law §80 (All investigatory evidence shall be sealed and deemed confidential);

(2) Allow petitions for special exemptions to disclosure requirements:

N.Y. 1975 Executive Order No. 10 ("Any person required to file such statements may request the Board to delete an item, which may be deleted by the Board only upon a finding that any such item is of a highly personal nature, does not in any way relate to the duties of the position held by such person, and does not create an actual or potential conflict of interest.");

N.C. 1977 Executive Order No. 1;

(3) Allow reporting of the mere identity of assets or value in terms of categorical range amounts, e.g.

Ala. Code Tit. 55, §327(8); Cal. Gov't Code §87200 (West); Ill. Ann. Stat. ch. 127, §601-101 (Smith-Hurd); Me. Rev. Stat. Tit. 1, §1001; Nev. Rev. Stat. §528, N.C. 1977 Executive Order No. 1; Tex. Pub. Offices Code Ann. Tit. 110A, §6252-9b (Vernon);

(4) Specifically exempt the listing of individual clients, customers or patients; e.g.

Nev. Rev. Stat. §528; Ohio Rev. Code. Ann §102.01 (Page).

blunt and totally ineffective instrument for electoral reform in the State of Florida. Even indulging the assumption that public officials will report unauthorized income or conflicting transactions, total avoidance of detection *under law* may be easily accomplished by at least two methods: (a) by taking the private gain in the name of a spouse or minor child, or (b) by creating a professional corporation or other intermediate association from which only a reported *salary* is drawn and reported, but not the nature, name or amount of the secondary source of profit. In *Buckley, supra*, similar loopholes that permitted wholesale skirting of restrictions helped condemn the ceilings on independent expenditures in the context of campaign financing. Laws which could not substantially achieve legitimate governmental ends, while invading protected rights were held to be invalid for both reasons.

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify §608(e)(1)'s ceiling on independent expenditures. First, assuming, *arguendo*, that large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions, §608(e)(1) *does not provide an answer that sufficiently relates to the elimination of those dangers*. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, §608(e)(1) prevents only some large expenditures. So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as

they want to promote the candidate and his views. *The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole — closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or office-holder.* It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office. [Cite].

*Buckley v. Valeo, supra*, 96 S.Ct., at 647, 46 L.Ed.2d, at 702.

The courts of fifteen states have reviewed the laws of their respective jurisdictions.<sup>23</sup> The contextual variations among the statutes and the differing ground for the decisions defy any inventory analysis. It is clear that a two-thirds majority of the fifteen jurisdictions have upheld financial disclosure laws as they pertain to elected

- <sup>23</sup>ALABAMA. *Comer v. City of Mobile*, Ala. 1976, 337 So.2d 742.  
 ALASKA. *Falcon v. Alaska Public Offices Comm'n*, Alaska 1977, 570 P.2d 469.  
 CALIFORNIA. *City of Carmel-by-the-Sea v. Young*, 1970, 2 Cal.3d 259, 85 Cal. Rptr. 1, 466 P.2d 225; *County of Nevada v. MacMillen*, 1974, 11 Cal.3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345; *Hays v. Wood*, 1978, 78 Cal.Supp.3d 352, 144 Cal. Rptr. 456 (Cal.App. 1978).  
 FLORIDA. *Goldtrap v. Askew*, Fla. 1976, 334 So.2d 20.  
 ILLINOIS. *Buettell v. Walker*, 1974, 59 Ill.2d 146, 319 N.E.2d 502; *Illinois State Employee's Ass'n v. Walker*, 1974, 57 Ill.2d 512, 315 N.E.2d 9, cert. den. sub nom., *Troopers Lodge No. 41 v. Walker*, 1974, 419 U.S. 1058, 42 L.Ed.2d 656, 955 S.Ct. 642; *Stein v. Howlett*, 1972, 52 Ill.2d 570, 289 N.E.2d 409, app. dismissed, 1973, 412 U.S. 925, 37 L.Ed.2d 152, 93 S.Ct. 2750.  
 MARYLAND. *Montgomery County v. Walsh*, 1975, 274 Md. 502, 336 A.2d 97, app. dismissed, 1976, 424 U.S. 901, 96 S.Ct. 1091, 47 L.Ed.2d 306.  
 MASSACHUSETTS. *Opinion of the Justices to the Senate*, Mass. 1978, 376 N.E.2d 810.  
 MICHIGAN. *Advisory Opinion on Constitutionality of 1975 PA 227* (Questions 2-10), 1976, 396 Mich. 465, 242 N.W.2d 3.  
 MINNESOTA. *Klaus v. Minnesota State Ethics Commission*, 1976, 309 Minn. 430, 244 N.W.2d 672.  
 MISSOURI. *Chamberlin v. Missouri Elections Comm'n* Mo. 1976, 540 S.W.2d 876; *Labor's Educ. and Political Club v. Danforth*, Mo. 1978, 561 S.W.2d 339.  
 NEVADA. *Dunphy v. Sheehan*, Nev. 1976, 549 P.2d 332.  
 NEW JERSEY. *Lehrhaupt v. Flynn*, Chan. Div. 1974, 129 N.J. Super. 327, 323 A.2d 537, aff'd App. Div. 1976, 140 N.J. Super. 250, 356 A.2d 35; *Kenny v. Byrne*, App. Div. 1976, 144 N.J. Super. 243, 365 A.2d 211.  
 NEW YORK. *Hunter v. City of New York*, N.Y. Sup.Ct. 1976, 88 Misc.2d 562, 391 N.Y.S.2d 289, aff'd, 1977 58 A.D.2d 136, 396 N.Y.S. 186; *Dwyer v. Kahn*, N.Y. Sup.Ct. 1976, 88 Misc.2d 73, 387 N.Y.S.2d 535; *Evans v. Carey*, 1976, 53 A.D.2d 109, 385 N.Y.S.2d 393, aff'd, 1976, 40 N.Y.2d 1008, 391 N.Y.S.2d 393, 359 N.E.2d 983.  
 WASHINGTON. *Fritz v. Gorton*, 1974, 83 Wash.2d 275, 517 P.2d 911, app. dismissed, 1974, 417 U.S. 902, 94 S.Ct. 2596, 41 L.Ed.2d 208.  
 WISCONSIN. *In re Kading*, 1975, 70 Wis.2d 508, 235 N.W.2d 409.

officials.<sup>24</sup> The courts, however, of Alaska, (*Falcon v. Alaska Public Offices Commission*, 1977, 570 P.2d 469), California, (*City of Carmel-By-the-Sea v. Young*, 1970, 466, P.2d 225), Michigan, (*Advisory Opinion on Constitutionality of 1975 PA 227 [Questions 2-10]*, 1976, 396 Mich. 465, 242 N.W.2d 3), Missouri, (*Labor's Educ. and Political Club v. Danforth*, 1978, 561 S.W.2d 339) and Nevada, (*Dunphy v. Sheehan*, 1976, 549 P.2d 332) have refused to sustain their particular State's disclosure laws.<sup>25</sup>

<sup>24</sup>Federal Constitutional right of privacy challenges were addressed and rejected in the following decisions:

*California*: *Hays v. Wood*, 1978, 78 Cal.Supp.3d 352, 144 Cal. Rptr. 456.

*Illinois*: *Stein v. Howlett*, 1972, 52 Ill.2d 570, 289 N.E.2d 409, app. dismissed, 1973, 412 U.S. 925, 93 S.Ct. 2750, 37 L.Ed.2d 152; *Illinois State Employee's Ass'n v. Walker*, 1974, 57 Ill.2d 512, 315 N.E.2d 9, cert. denied sub.nom., *Troopers Lodge No. 41 v. Walker*, 1974, 419 U.S. 1058, 95 S.Ct. 642, 42 L.Ed.2d 656 (Powell and Blackmun, JJ., would grant cert.)

*Maryland*: *Montgomery County v. Walsh*, 1975, 274 Md. 502, 336 A.2d 97, app. dismissed, 1976, 424 U.S. 901, 96 S.Ct. 1091, 47 L.Ed.2d 306.

*Massachusetts*: *Opinion of the Justices to the Senate*, 1978, 376 N.E.2d 810.

*Minnesota*: *Klaus v. Minnesota State Ethics Comm.*, 1976, 309 Minn. 430, 244 N.W.2d 672.

*New Jersey*: *Lehrhaupt v. Flynn*, 1974, 129 N.J. Super. 327, 323 A.2d 537, aff'd 1976, 140 N.J. Super. 250, 356 A.2d 35; *Kenny v. Byrne*, 1976, 144 N.J. Super. 243, 365 A.2d 211.

*New York*: *Hunter v. City of New York*, 1976, 88 Misc.2d 562, 391 N.Y.S.2d 289, aff'd 1977, 58 A.D.2d 136, 396 N.Y.S. 186; *Evans v. Carey*, 1976, 53 A.D.2d 109, 385 N.Y.S.2d 393, 359 N.E.2d 983; aff'd, 1976, 40 N.Y.2d 1008, 391 N.Y.S.2d 393, 359 N.E.2d 983.

*Washington*: *Fritz v. Gorton*, 1974, 83 Wash.2d 275, 517 P.2d 911, app. dismissed, 1974, 417 U.S. 902, 94 S.Ct. 2596, 41 L.Ed.2d 208.

<sup>25</sup>The Nevada and Alaska Courts based their determinations on state grounds.

The resulting outfall from these disclosure enactments decomposes for the public officeholder and seeker the fine web of privacy cloaking every other American by constitutional guarantee. Whether this is an effective procedure necessary for the improvement of the electoral process, or whether this is a gross violation of constitutionally protected guarantees of privacy, has not yet been authoritatively determined. Until it is decided, some qualified candidates will shrink from the indignity of unnecessary financial scrutiny.<sup>26</sup> The number is uncertain. Those whose sensibilities prohibit them from financial disclosure will also decline to announce their reasons for not qualifying or retiring. Others will endure the embarrassment and offer themselves for public service. All are entitled to know whether the Hobson's choice imposed upon them by these laws is constitutional or not. Of lesser significance, but still of major importance, is the growing conflict in decisions among the highest courts of the states which have considered the question. That some officials

<sup>26</sup>The Court of Appeals chose to disregard this problem.

Disclosure requirements may deter some people from seeking office. As the Supreme Court has made clear, however, mere deterrence is not sufficient for a successful constitutional attack. *Bullock v. Carter*, 1972, 405 U.S. at 142-43, 92 S.Ct. 849. Otherwise, official salary levels or the location of the capital city might furnish the basis for a constitutional attack. The key to this issue is who is excluded. These requirements are not unconstitutional unless "they are so restrictive that they deny a cognizable group a meaningful right to representation." Tribe, *American Constitutional Law*, §13-19 (1978). See also *Developments in the Law - Elections*, 88 Harv.L.Rev.1111, 1218, 1176-77 (1975).

*Plante v. Gonzalez*, supra, 575 F.2d, at 1126.

are forced to disclose, while others are not is an anomalous situation which warrants correction.

Where serious questions of Federal constitutional law exist with regard to statutes affecting significant numbers of Americans, particularly those who aspire to or who are in the public service, the court has not hesitated to remove uncertainty and deprivation by granting review.

## II.

### THE COURT OF APPEALS ERRED IN HOLDING THAT A STATE'S INTEREST IN SECURING INTEGRITY IN PUBLIC OFFICE WARRANTS THE ELIMINATION OF THE PUBLIC OFFICIAL'S PRIVACY IN FINANCIAL AFFAIRS.

The District Court viewed constitutional protection of privacy interests very narrowly:

To date the Supreme Court has extended the fundamental right of privacy only to a narrowly drawn area surrounding family life and the types of highly personal choice intrinsic to the family. "This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973). Similar language is found in *Paul v. Davis*, 424 U.S. 693, 713 (1976); and *Whalen v. Roe*, \_\_\_\_ U.S. at \_\_\_\_, 51 L.Ed.2d at 73 n. 26. Moreover, it could hardly be claimed that the interest in personal financial privacy asserted by the

plaintiffs here shares the same attributes of those interests the court has deemed "fundamental." "To equate this interest with the fundamental decisions to marry and to bear and raise children is to extend the limited substantive contours of the Due Process Clause beyond recognition." *Moore v. City of East Cleveland*, \_\_\_\_ U.S. at \_\_\_\_, 52 L.Ed.2d at 560 (Stewart, J., dissenting).

### District Court Opinion (App. p. 7)

It found that financial privacy is neither "fundamental" (App. p. 7) nor "inherent in the concept of ordered liberty" (App. p. 7) and ruled that the autonomy branch of privacy does not prohibit compulsory economic disclosure. To this extent, the Court of Appeals agreed.

Financial privacy does not fall within the autonomy right on its own. The essence of that right is "the interest in independence in making certain kinds of important decisions." *Whalen v. Roe*, 429 U.S. 599-600, 97 S.Ct. 876. Disclosure laws, unlike laws banning contraception, miscegenation, or abortion, do not remove any alternatives from the decision-making process. Their effect on financial decisions is more indirect. They might deter some decisions. *More basically, however, disclosure laws do not involve decisions as important as those in the earlier decided cases.*

*Plante*, supra, 575 F.2d, at p. 1130-1131 (emphasis supplied).

Financial privacy is not within the autonomy branch of the right to privacy. Disclosure does not directly affect such fundamental decisions that "we are deprived of control over such intimacies of our bodies and minds as to offend what are ultimately shared standards of autonomy." Gerety, *Redefining Privacy*, 12 Harv. Civ.R.-Civ. L.L.Rev. 233, 268 (1977). Nor is its indirect effect on intimate decisions as strong as some which the Court has held do not invoke strong constitutional protection. The district court properly concluded that the senators cannot bring their complaint within this branch of the right to privacy.

Plante, *supra*, 575 F.2d, at P. 1132.

However, the Court of Appeals looked to the second category under the rubric of "privacy", that strand

called the right to confidentiality,<sup>27</sup> and therein found protection for the right of economic and financial privacy. In so holding, the Court of appeals relied on *California Bankers Ass'n v. Schultz*, (1974) 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812, wherein recording and disclosure requirements contained in the Bank Security

<sup>27</sup>See Gerety — *Redefining Privacy*, 12 Har.Civ.R.L.Rev.233 (1977)

In *Whalen v. Roe*, (1977) 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64, the Supreme Court characterized privacy as having "two different kinds of interests". The first, *autonomy*, is "the interest in independence in making certain kinds of important decisions"; the second, "is the individual interest in avoiding disclosure of personal matters." 97 S.Ct., at 876. The first class is apparently still limited to "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education" *Paul v. Davis*, (1976) 424 U.S. 693, 713, 96 S.Ct. 1155, 47 L.Ed.2d 405. The second class (avoiding disclosure of personal matters) upon which the Court of Appeals relied to find the privacy interest in financial matters has not been curtailed. In affirming its existence, the Supreme Court stated:

In his dissent in *Olmstead v. United States*, Mr. Justice Brandeis characterized "the right to be let alone" as "the right most valued by civilized men." 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed.944; in *Griswold v. Connecticut*, the Court said: ". . . the First Amendment has a penumbra where privacy is protected from governmental intrusion." 381 U.S. 479, 483, 85 S.Ct. 1678, 1681, 14 L.Ed.2d 510. See also *Stanley v. Georgia*, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542; *California Bankers Assn. v. Schultz*, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812 (Douglas J., dissenting, at 79, 94 S.Ct. at 1526) (Powell, J., concurring, at 78, 94 S.Ct. at 1525).

*Whalen v. Roe*, *supra*, 97 S.Ct., at 876,n.25.

Act of 1970, 12 U.S.C. §1829(b) *et seq.*, and its implementing regulations were challenged. Title I of the Act required financial institutions to maintain records of the identities of their customers, to microfilm copies of certain checks drawn by them, and to keep records of certain other items. Title II of the Act compelled disclosures of certain foreign and domestic currency transactions. The government's interest was highly visible; the bank records would "have a high degree of usefulness in criminal, tax, and regulatory investigations and proceeding." *Id.*, 39 L.Ed.2d, at 854. Nevertheless, a three Judge court found that the domestic reporting provisions of Title II of the Act were violative of the constitutional rights of the bank's customers:

The court held that since the domestic reporting provisions of the Act permitted the Secretary of the Treasury to require detailed reports of virtually all domestic financial transactions, including those involving personal checks and drafts, *and since the Act could conceivably be administered in such a manner as to compel disclosure of all details of a customer's financial affairs, the domestic reporting provisions must fall as facially violative of the Fourth Amendment.* (emphasis added)

*Id.*, 39 L.Ed.2d, at 829.

The Supreme Court reversed in a plurality decision, holding that since only reports of abnormally large transactions in currency are required, "[t]he regulations do not impose unreasonable recording requirements on

the banks" *Id.*, 39 L.Ed.2d, at 844. It held that on this basis neither First, Fourth nor Fifth Amendment protections were violated.

The three dissenters (Justices Douglas, Brennan, Marshall) were not satisfied with that rationale in the face of strong privacy claims. Justice Douglas asserted:

Customers have a constitutionally justifiable expectation of privacy in the documentary details of the financial transactions reflected in their bank accounts.

*Id.*, 39 L.Ed.2d, at 852.

Further:

It is, I submit, sheer nonsense to agree with the Secretary that *all bank records of every citizen* "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." That is unadulterated nonsense unless we are to assume that every citizen is a crook, an assumption I cannot make.

Since the banking transactions of an individual give a fairly accurate account of his religion, ideology, opinions, and interests, a regulation impounding them and making them automatically available to all federal investigative agencies is a sledgehammer approach to a problem that only a delicate scalpel can manage. Where fundamental personal rights are involved — as is true when as here the Government gets large access to one's

beliefs, ideas, politics, religion, cultural concerns, and the like — the Act should be “narrowly drawn” (*Cantwell v. Connecticut*, 310 U.S. 296, 307, 84 L.Ed. 1213, 60 S.Ct. 900, 128 ALR 1352) to meet the precise evil. *Bank accounts at times harbor criminal plans. But we only rush with the crowd when we vent on our banks and their customers the devastating and leveling requirements of the present Act. I am not yet ready to agree that America is so possessed with evil that we must level all constitutional barriers to give our civil authorities the tools to catch criminals.* (emphasis added)

*Id.*, 39 L.Ed.2d, at 855.

The dissenters’ belief in a limited right of financial privacy was echoed by Justices Powell and Blackmun, who, while concurring with the majority because regulations (31 CFR §103.22) limited domestic reporting requirements to “a transaction in currency of more than \$10,000.00” warned:

A significant extension of the regulations’ reporting requirements, however, would pose substantial and difficult constitutional questions for me. In their full reach, the reports apparently authorized by the open-ended language of the Act touch upon intimate areas of an individual’s personal affairs. Financial transactions can reveal much about a person’s activities, associations, and beliefs. *At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy.* Moreover, the potential for abuse is

particularly acute where, as here, the legislative scheme permits access to this information without invocation of the judicial process. In such instances, the important responsibility for balancing societal and individual interests is left to unreviewed executive discretion, rather than the scrutiny of a neutral magistrate. *U.S. v. United States District Court*, 407 U.S. 297, 316-317, 32 L.Ed.2d 752, 92 S.Ct. 2125 (1972). As the issues are presently framed, however, I am in accord with the Court’s disposition of the matter. (Powell, J., concurring) (emphasis added).

*Id.*, 39 L.Ed.2d, at 850-851.<sup>28</sup>

The recognition of a constitutional right to financial privacy was the beginning, not the end, of the Court of Appeal’s inquiry. Privacy rights are no more absolute than are other rights secured by the constitution; and

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<sup>28</sup>This view on the existence of a right in financial privacy of an apparent majority of the *California Bankers Association*, *supra*, court was approved in the *per curiam* opinion in *Buckley*, *supra*, wherein the court stated:

Moreover, the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations for “[f]inancial transactions can reveal much about a person’s activities, associations and beliefs.” *California Bankers Ass’n v. Schultz*, 416 U.S. 21, 78-79, 94 S.Ct. 1494, 1526, 39 L.Ed.2d 812 (1974) (Powell, J., concurring).

*Buckley v. Valeo*, *supra*, 46 L.Ed.2d, at 714, 96 S.Ct., at 657.

are subject to displacement by the demands of sufficiently important state interests. The Court of Appeals found, and the petitioners agree, that Florida had the right to demand recording of personal financial data from incumbents and candidates for public office.

The second stage of reasoning in the Court of Appeals decision involved the Senators' claim that although competing public interests outweigh the individual privacy right, the least intrusive means must be used to achieve those ends. The court rejected the proposition that all government interests are fully met by *recording* of financial data with an independent commission charged with administration of the data pending a probable cause finding of wrongdoing. To the contrary, the court held that public disclosure of personal financial interests advanced one of the most legitimate of state interests, and justified publication of the Senators' financial statements.

The senators' final complaint is that the State's interests would be served just as well by limiting disclosure to the Florida Commission on Ethics. This could deter some corruption, restore some public confidence, and detect some malfeasance. But the Florida voters have decided that it could not provide the voting public with the valuable information public disclosure creates; something more is needed. *This educational feature of the Amendment serves one of the most legitimate of state interests: it improves the electoral process. That goal, recognized as important by the Supreme Court in Buckley, can be met in no other way. That goal justifies public publication of the*

*senators' financial statements.* (emphasis added).

*Plante v. Gonzalez*, supra, 575 F.2d, at 1137.

In other words, the Court of Appeals held that where recording of private data can be compelled by the state, public disclosure of the data can be simultaneously compelled without any further showing that vindication of State interests will require that disclosure; or that public disclosure is the method most "closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley v. Valeo*, 46 L.Ed.2d, at 691.

In so holding, the Court of Appeals rejected the guidance of two recent decisions which upheld privacy invasions caused by compulsory recording of personal data with governmental officials, precisely because *public disclosure* of the data was prohibited and adequate provision was made to safeguard privacy rights from such disclosure.

In *Nixon v. Administrator of General Services*, (1977) 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867, the court considered the validity of 44 U.S.C. §2107, the "Presidential Recording and Materials Preservation Act", which authorized the Administrator of General Services to take custody of the papers and tape recordings of former President Richard M. Nixon. His duty was to screen the materials, to return those deemed personal and private in nature and retain the remainder for future public access. The Act was challenged on a variety of grounds including a claim that its recording and disclosure requirements violated appellant's

privacy interests. The President acknowledged a diminished right of privacy for those who enter public life; but argued that “. . . he was not thereby stripped of all legal protection for his privacy,” *Nixon*, supra, 97 S.Ct., at 2796, a point with which the Supreme Court agreed:

One element of privacy has been characterized as “the individual interest in avoiding disclosure of personal matters . . .” *Whalen v. Roe*, [cite omitted]. *We may agree with appellant that, at least when government intervention is at stake, public officials, including the President, are not wholly without constitutionally protected privacy rights in matters of personal life unrelated to any acts done by them in their public capacity. Presidents who have established Presidential libraries have usually withheld matters concerned with family or personal finances, or have deposited such materials with restrictions on their screening.* 408 F.Supp., at 360. We may assume with the District Court, for the purposes of this case, that this pattern of *de facto* Presidential control and congressional acquiescence gives rise to appellant’s legitimate expectation of privacy in such materials. *Katz v. United States*, 389 U.S. 347, 351-353, 88 S.Ct. 507, 511-512, 19 L.Ed.2d 576 (1967).

*Nixon*, supra, 97 S.Ct., at 2797. (emphasis added)

The Court found there to be a compelling need for examination of the 42 million documents, not more than

200,000 of which could possibly embrace the appellant’s privacy claim relative to:

extremely private communications between [him] and, among others, his wife, his daughters, his physician, lawyer and clergyman, and his close friends as well as personal diary dictabelts and his wife’s personal files . . .

*Nixon*, supra, 97 S.Ct., at 2798.

But the court found that the examination process would not result in public disclosure, since it would be undertaken by government archivists with an unblemished record for discretion, and on that basis upheld the Constitutionality of the statute:

In sum, appellant has a legitimate expectation of privacy in his personal communications. But the constitutionality of the Act must be viewed in the context of the limited intrusion of the screening process, of appellant’s status as a public figure, of his lack of any expectation of privacy in the overwhelming majority of the materials, of the important public interest in preservation of the materials, and of the virtual impossibility of segregating the small quantity of private materials without comprehensive screening. When this is combined with the Act’s sensitivity to appellant’s legitimate privacy interests, see §104(a)(7), the unblemished record of the archivists for discretion, and the likelihood that the regulations to be promulgated by the Administrator will

further moot appellant's fears that his materials will be reviewed by "a host of persons," Brief for Appellant 150, we are compelled to agree with the District Court that appellant's privacy claim is without merit.

*Nixon, supra*, 97 S.Ct., at 2801.

The Court made clear that examination, even by discrete archivists was subject to the least restrictive means test; and that since, in this instance, there was no alternative, to such limited, non-public inspection, it upheld the statute:

It is of course true that involvement in partisan politics is closely protected by the First Amendment, . . . and that "compelled disclosure in itself can seriously infringe on privacy and belief guaranteed by the First Amendment." . . . *But a compelling public need that cannot be met in a less restrictive way will override those interests, . . . , "particularly when the 'free functioning of our national institutions' is involved."* . . . *Since no less restrictive way than archival screening has been suggested as a means for identification of materials to be returned to appellant, the burden of that screening is presently the measure of his First Amendment claim.* . . .

The extent of any such burden, however, is speculative in light of the Act's terms protecting appellant from improper public disclosures and guaranteeing him full judicial review before any public access is permitted. §§104(a)(5),(a)(7), 105(a). As the District

Court concluded, the First Amendment claim is clearly outweighed by the important governmental interests promoted by the Act.

*Nixon, supra*, 97 S.Ct., at 2802-2803.

In *Whalen v. Roe*, (1977) 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64, the Court upheld portions of New York's Controlled Substances Act, which compelled the recording in a centralized computer file, of the names of persons who obtained, pursuant to a physician's prescription, certain drugs for which there was a lawful and an unlawful market. The District Court had enjoined enforcement on the ground that the statute violated the drug users' constitutionally protected right of privacy. On appeal, the Supreme Court applied the two-pronged test above described. It found that there was a compelling state interest in requiring the recording of the medical data in a centralized computer bank.

There surely was nothing unreasonable in the assumption that the patient identification requirement might aid in the enforcement of laws designed to minimize the misuse of dangerous drugs. For the requirement could reasonably be expected to have a deterrent effect on potential violators as well as to aid in the detection or investigation of specific instances of apparent abuse. At the very least, it would seem clear that the State's vital interest in controlling the distribution of dangerous drugs would support a decision to experiment with new techniques for control. For if an experiment fails — if in this case experience teaches that the patient

identification requirement results in the foolish expenditure of funds to acquire a mountain of useless information — the legislative process remains available to terminate the unwise experiment. It follows that the legislature's enactment of the patient identification requirement was a reasonable exercise of New York's broad police powers.

*Whalen v. Roe*, supra, 97 S.Ct., at 875-876.

In addition the court found that the statute utilized the least intrusive means so as to constitute the least possible invasion of privacy rights.

No public disclosure of the data was permitted absent specific allegations of overuse of drugs by specific patients.

Public disclosure of patient information can come about in three ways. Health department employees may violate the statute by failing, either deliberately or negligently, to maintain proper security. A patient or a doctor may be accused of a violation and the stored data may be offered in evidence in a judicial proceeding. Or, thirdly, a doctor, a pharmacist or the patient may voluntarily reveal information on a prescription form.

The third possibility existed under the prior law and is entirely unrelated to the existence of the computerized data bank. Neither of the other two possibilities provides a proper ground for attacking the statute as invalid on its face.

There is no support in the record, or in the experience of the two States that New York has emulated, for an assumption that the security provisions of the statute will be administered improperly. And the remote possibility that judicial supervision of the evidentiary use of particular items of stored information will provide inadequate protection against unwarranted disclosures is surely not a sufficient reason for invalidating the entire patient identification program.

*Id.*, 97 S.Ct., at 877-878.

It is clear that the Supreme Court has warned that the inhibiting features of public disclosure of personal information may be unconstitutional even while approving compulsory recording of the same data. The Court has not yet ruled directly on public disclosure issues in the context of a public official's personal financial data, but has clearly stated that public disclosure as well as recording must meet the test of overwhelming need and the absence of other reasonable alternatives. Neither of the Courts below heeded this standard, or applied the tests to public disclosure as distinguished from recording with independent agencies.

### III

THE PETITIONERS HAVE STANDING TO ASSERT THE PRIVACY INTERESTS OF THEIR CLIENTS, CUSTOMERS, BUSINESS ASSOCIATES AND FAMILY MEMBERS.

In lieu of public display of one's federal income tax return, the officeholder or candidate may file a sworn statement identifying each source and amount of income received in excess of \$1,000. The Court of Appeals recognized that clients, patients and customers who utilize the non-governmental services of the officeholder, may be entitled to some privacy in their dealings. *Plante*, supra, 575 F.2d, at 1137. Nevertheless the Court of Appeals declined to consider the invasion into the privacy of these third parties, stating:

No clients or patients are parties to this suit. The Senators have not tried to assert the interest of their clients or customers. The shape of the secondary source requirement is unclear. If precise regulations on this matter have been promulgated by the Florida Commission on Ethics, we have not found them. Commission regulations might allow exemptions in sensitive situations. The Amendment provides an option, the federal tax return, which eliminates any need to itemize income sources. On the record before us, we cannot invalidate this feature of the Amendment. We intimate no opinion as to the outcome of a challenge to the application of the secondary source requirement in some specific situation.

*Plante* supra, 575 F.2d, at 1137.

Contrary to the Court's characterization, the Senators asserted the privacy interests of third parties and family members in their complaint, stating at paragraph seventeen:

The requirements of the Amendment are now in effect. The Plaintiff is currently under obligation to comply with disclosure of his assets. Such disclosure in his instance will also result in the shredding of the financial privacy of his parents, his brothers, and his family, who have operated a successful family business enterprise for two generations. Rather than do so, the Plaintiff will resign as State Senator. The Plaintiff asserts that Section 8(a) of the Amendment is null, void and unconstitutional to the extent that it requires public disclosure of financial assets. Until the issue is resolved, the Plaintiff will be in doubt as to his rights.

The invasion of private citizens' privacy, which ineluctably flows from requiring part-time public officers to disclose their financial matters, must be considered. Because only the Senators are directly subjected to the mandatory financial disclosure requirements, they have standing to assert the privacy rights of third parties who are not before the court. Similarly, that citizen who pays dues to an organization or is a member thereof is protected from governmentally forced disclosure to the public-at-large, [see, e.g. *Bates v. City of Little Rock*, (1960) 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480] unless and until the government can demonstrate that the means chosen are the least intrusive invasion of individual rights. *Shelton v. Tucker*, (1960) 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231.

In *N.A.A.C.P. v. Alabama ex rel. Patterson*, (1958) 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488, the Association was permitted to assert the rights of its members in order to bar a state court's attempts to compel disclosure of its membership list:

If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association. To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion.

*Id.* at 459.

If the clients, customers and family members have a right of privacy in their financial dealings with public officials — wholly separate from the official's governmental duties — the public disclosure by a Senator of the Senator's financial receipts would "result indirectly in the violation of third parties' rights". *Craig v. Boren* (1976) 429 U.S. 190, 195, 97 S.Ct. 451, 50 L.Ed.2d 397. In *Craig v. Boren*, this Court permitted a beer vendor to raise the equal protection claims of her male customers, who were forbidden to purchase the coveted intoxicant until attaining age 21 while females could legally imbibe at age 18. The Court deemed it decisive that the challenged law placed the vendor under a duty to comply with a statute which would indirectly violate the male customer's rights.

Standing to assert privacy claims of third parties has been regularly extended to those directly regulated by the government. *See, e.g., Griswold v. Connecticut*, (1965) 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510, [Physician and Director of Planned Parenthood Clinic could successfully assert the right of married persons, with whom they had a professional relationship, to boudoir privacy]; *Pierce v. Society of Sisters* (1925) 268

U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070. [Private school could assert rights of customer-parents to educate their children in non-public schools]; *Planned Parenthood of Central Missouri v. Danforth*, (1976) 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788, [Physicians had standing to assert disclosural privacy claims of patients who had obtained an abortion].

If a citizen chooses to utilize the lawyering talents of Senator Barron, a public figure, that citizen is not thereby transformed into a public figure. *See, Time, Inc. v. Firestone*, (1976) 424 U.S. 448, 96 S.Ct. 958, 47 L.Ed.2d 154. The rights of non-public persons are affected by Article II, §8 and should be weighed in the balance.

## CONCLUSION

This court has settled the constitutional issues raised by legislation directed toward the regulation of campaign financing. *Buckley v. Valeo*, (1976) 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659. The unfinished task remains to consider the validity of the laws requiring aspirant and incumbent public officials to *publicly disclose personal financial matters*. The Court of Appeals did not follow this Court's two-pronged test in weighing the competing interests of society's need to preserve the integrity of public office and the individual's personal liberty rights guaranteed by the Constitution. While Art. II, §8, of the Florida Constitution may satisfy legitimate societal interests, its public disclosure requirements *unnecessarily and excessively* violate the individual's privacy rights protected by the First, Ninth and Fourteenth Amendments. Alternative methods are available to serve societal needs with a less drastic intru-

sion into guaranteed rights. The Supreme Court should grant this petition for certiorari in order to satisfy the urgent need for authoritative determination of whether unlimited public disclosure of financial matters, as a precondition to holding public office, unnecessarily violates the individual's right to privacy.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was this\_\_\_\_day of November, 1978, served upon the following persons: Larry Gonzalez, Esq., Executive Director, Florida Commission on Ethics, P.O. Box 6, Tallahassee, Florida 32302; Jesse McCrary, Secretary of State of Florida, The Capitol, Tallahassee, Florida; Reubin O'D Askew, Governor, The Capitol Building, Tallahassee, Florida; Robert L. Shevin, Esq, Attorney General, The Capitol, Tallahassee, Florida.

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TOBIAS SIMON